IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2868 OF 1985

Punjab & Sind Bank .. Plaintiffs

Vs.

M/s.Unimac Auto P.Ltd. & Anr. .. Defendants

Mr.K.H.Modi i/b Haridas & Co. for the plaintiffs

None for the defendants

CORAM : S.U.KAMDAR, J

DATED : 11TH JULY 2005

P.C.:

1. The present suit is filed for Rs.1,60,446.71 as per the particulars of claim together with interest thereon @ 18% p.a. It is the case of the plaintiffs that sometime in or about 1978 defendants approached the plaintiffs and requested for facilities in the form of deferred payment guarantee in favour of Hindustan Machine Tools for the purpose of two cylindrical grinding machine. Pursuant to the said request, plaintiffs granted to the defendant no.1 the facilities of

deferred payment guarantee in favour of Hindustan Machine Tools being deferred payment guarantee 34/78. In consideration of the said facility granted by the plaintiffs, defendant no.1 executed an agreement of Hypothecation dt.17.5.78 whereunder defendants no.1 hypothecated and charged in favour of the plaintiffs the said machine set out in the Agreement of Hypothecation as security for the repayment of the amounts paid by the plaintiffs to the said HMT on behalf of the defendants no.1. Defendant no. 1 also executed bill of exchange in favour of the said HMT towards deferred instalments of the purchase price of the said machinery.

2. It is the case of the plaintiffs that under the said deferred payment guarantee, plaintiffs paid to the HMT an amount duly guaranted under the said guarantee no.34/78. However, defendant no.1 failed to repay the said amount to the plaintiffs and the account of the plaintiffs became irregular. It is the case of the plaintiffs that similar guarantee bearing no.41/78 was also executed in respect of another machine by defendant no.1 which was also to be purchased from the HMT by the

defendant no.1. Under the said second guarantee also plaintiffs made payment to the HMT on its due date. However, there were defaults in payment of balance of instalments by defendant no. 1 totalling to Rs.1,60,446.71. and accordingly, the present suit has been filed.

3. Defendant no.1 has gone in liquidation pursuant to an order passed by this court on 10.1.84 in Company Petition No.651/81. Official Liquidator has been brought on record. Plaintiff has obtained leave u.s.46 to institute the present suit. Though written statement is filed by Official Liquidator it contains mere denial and written statement is also filed by defendants no.2. However, defendants no.2 is not appearing in the matter. The learned counsel for the plaintiffss have tendered compilation of documents which is taken on record and marked Ex.P-1 collectively.. Plaintiff has also tendered affidavit of one Anirudha Giridhar Gaonka, an officer of the plaintiffss bank having his office at Opera House Branch, who has deposed on the basis of record. He has deposed that facility of deferred payment

guarantee was given to defendant no.1 and there is outstanding amount due and payable of Rs.1,60,446.71. Official Liquidator has not cross-examined the said witness. In view thereof, evidence of the plaintiffs has gone unchallenged. In the aforesaid circumstances, the following decree is passed.

4. There shall be decree in favour of the plaintiffs and against the defendantss for the sum of Rs.1,60,446.71 alongwith interest @ 18% p.a. from the date of the suit till payment and/or realisation.

5. Plaintiffs will file decree with defendants no.1. Official Liquidator who shall make payment of the suit claim after ascertaining priorities of all creditors in accordance with s.529 and s.529A of the Companies Act.